THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12950 of 2005

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DATED; 27-07-2005

Between:

1 Sri Ramanama Sankirthana Sangham Rep.by its Secretary Vijayawada Krishna District and three others.

..... PETITIONERS

AND

The Dy. Commissioner Endowments Dept.,
Kakinada E.G. District.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 12950 of 2005

ORDER:

The Petitioners place reliance on Section 29(5)(b)(iv) and Section 29(5)(d) of the A.P.Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') in support of their contention that they, as the Managing Trustees, are entitled to operate the bank accounts. It is their further contention that the rules prescribed in G.O.Ms.No.629, dated 30.06.1989, have no application, since the said rules apply only to short term or long term deposits or investments and not for operation of bank accounts to meet day to

day expenses. They also contend that the Deputy Commissioner has no jurisdiction to pass the order directing the Bank to permit the bank account to be operated jointly by the Managing Trustee and by the Inspector of the Endowments Department.

Section 29(5)(b)(iv) of the Act empowers the Executive Officer, subject to such restrictions as may be imposed by the Government, to deposit all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders or cheques against such moneys.

Section 29(5)(d) of the Act provides that where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment, the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment duly authorized by the Commissioner in this behalf shall exercise the powers, perform the functions and discharge the duties of an Executive Officer.

It is thus clear that it is only when there is no Executive Officer in respect of any Charitable Institution that the trustee or the Chairman of the Board of Trustees is empowered to exercise powers, perform the functions and discharge the duties of an Executive Officer. The affidavit is silent as to whether or not there is an Executive Officer for the petitioners-Endowments.

In the Rules notified in G.O.Ms.No.629, dated 30.06.1989, called the A.P.Charitable and Hindu Religious Institutions & Endowments (Depositing and Investment of Moneys) Rules, 1989 (for short 'the Rules'), Rule 2 defines Competent Authority to mean the Commissioner as defined in clause (6) of Section 2 of the Act. Rule 3 requires the moneys received by the Charitable or Religious Institutions or Endowments to be in the custody of the Executive Officer or the Chairman of the Board of Trustees or Trustee, where there is no Executive Officer. Rule 4 provides that all moneys received by the Executive Officer or the Board of Trustee or Trustees and in excess of the limit laid down by the Assistant Commissioner, Deputy Commissioner or Regional Joint Commissioner, or

Commissioner in respect of Institutions or Endowments under their respective jurisdiction shall be deposited in a Scheduled Bank as defined in the Reserve Bank of India Act, 1934. Rule 6 provides that the deposit of moneys under Rule 4 or Rule 5 shall be made in the name of the Institution or Endowment. The power to withdraw such deposits or any part thereof and operate on the Bank or Treasury account shall vest jointly in the Office of the Endowment Department to be specified by the Commissioner and in the Executive Officer or the Chairman of the Board of Trustees where there is no Executive Officer. Proviso to Rule 6 empowers the Commissioner to exempt any Officer of the cadre of Deputy Commissioner or Assistant Commissioner, as the case may be, from the operation of the above rule. Rule 10(i) provides the date of maturity of each investment shall be carefully watched by the Executive Officer or Chairman of the Board of trustees and the proposal to withdraw or reinvest the amount covered by the investment together with the interest thereon shall be submitted to the competent authority sixty days in advance of the maturity through the Regional Joint Commissioner. Rule 10(ii) provides that the competent authority, after considering the financial position of the Institution or Endowment, shall issue order for withdrawal or reinvestment, as the case may be.

The order impugned in this writ petition is passed by the Deputy Commissioner (FAC), Endowments Department, Kakinada, whereby the Branch Managers of various Nationalized Banks were instructed not to permit operation of the bank account by the Managing Trustee alone. The said orders state that at present the savings bank account of many of the endowments were being operated by the Managing Trustee only by obtaining specific permission orders for each withdrawal of amount from the Deputy Commissioner of Endowments, Kakinada, and that it was not only contrary to the statutory rules but also causing much inconvenience to the Executive Authority of the Institutions in obtaining permission orders every time. The Deputy Commissioner, in terms of Rule 6 of statutory rules, informed the banks concerned to permit operation of the savings

bank account jointly by the Managing Trustee and the Inspector of Endowments Department, Vijayawada.

Sri.C.C.S.Sastry, learned counsel for the petitioners, contends rightly so, that both under the Act and the Rules the Deputy Commissioner does not have jurisdiction to pass these orders. It is true that under Rule 6 of the Rules notified in G.O.Ms.No.629, dated 30.06.1989, the power to specify the Officer of the Endowment Department, who shall operate the bank account jointly either with the Executive Officer or the Chairman of Board of Trustees of the Endowment concerned lies with the Commissioner and not the Deputy Commissioner. The impugned orders are, therefore, liable to be set aside.

The question, however, remains as to whether the petitioners, as Managing Trustees, are entitled to operate the bank account on their own.

Sri.C.C.S.Sastry submits that the very orders directing that the account be operated jointly by the Managing Trustee and by the Inspector of Endowments Department indicate that there is no Executive Officer for the Institutions concerned and therefore under section 29(5)(d) of the Act, the Managing Trustee ought to be permitted to operate the bank account for the Endowment, more so, as the Rules in G.O.Ms.No.629, dated 30.06.1989 have no application.

I am afraid I cannot agree Rule 3 of the rules requires moneys received by the Charitable or Religious Institutions or Endowments to be in the custody of the Executive Officer or the Chairman of the Board of Trustees or Trustee, where there is no Executive Officer. Rule 4 requires all moneys received by the Executive Officer or the Board of Trustee or Trustees and in excess of the limit prescribed by the Assistant Commissioner, Deputy Commissioner or Regional Joint Commissioner, or Commissioner in respect of Institutions or Endowments under their respective jurisdiction to be deposited in a Scheduled Bank. Within the limits specified by the authorities

concerned, the moneys received, by the Charitable or Religious Institutions or Endowments concerned, is required to be kept in the custody of the Executive Officer and in his absence with the Chairman of the Board of Trustees. Any amount in excess of these limits is alone required to be deposited in a Scheduled Bank. Once the amount is so deposited in a Scheduled bank, the power to withdraw the amount so deposited vests jointly in the Officer of the Endowments department to be specified by the Commissioner and in the Executive Officer or Chairman of Board of Trustees where there is no Executive Officer. The Rules do not empower the Managing Trustee to withdraw the amount deposited in the Scheduled bank on his own. Rule 10 of the Rules deals with the amount on maturity of investment. The investments specified therein i.e., short term or long term investments, are distinct from the amount deposited in the bank, which are to be operated jointly in terms of Rule 6 of the Rules. The amount deposited in a Scheduled bank in terms of Rule 4, can in turn be invested in short term or long term deposits to which Rule 10 of the Rules applies. Rule 10 of the Rules cannot be relied upon to contend that the said Rules have no application for operation of bank account to meet the regular expenditure of the Endowments concerned.

Since the bank accounts are required to be operated jointly by an Officer of the Endowments Department and the Executive Officer or Chairman of the Board of Trustees in the absence of the Executive Officer and as the Rules cast a duty on the Commissioner to specify the Officer who shall operate the account jointly with the Executive Officer or the Chairman of the Board of Trustees, there shall be a direction to the Commissioner, Endowments to forthwith specify an Officer of the Endowments Department who shall be authorized to operate the bank account jointly with the Managing Trustee of the petitioners-Endowments, provided, there is no Executive Officer for the Endowments concerned. Since the back accounts are not being operated at present which is likely to hamper the activities of the petitioners, the Commissioner shall specify the Officer and intimate

the same to the bank within one week from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

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(RAMESH RANGANATHAN, J)

Dated: 27-07-2005

vs

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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1 Sri Ramanama Sankirthana Sangham Rep.by its Secretary Vijayawada Krishna District and three others.

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